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## **H.R. 4444 – Permanent Normal Trade Relations with the People's Republic of China**

Calendar No. 575

Received in the Senate, read twice, and placed on the Legislative Calendar under General Orders on May 25, 2000. H. Rept. 106-632.

### **NOTEWORTHY**

- On July 27, 2000, the Senate voted to invoke cloture on the motion to proceed to H.R. 4444 by a vote of 86 to 12 [Roll Call Vote # 231].
- H.R. 4444 allows the President to grant PNTR ("permanent normal trade relations," also called "nondiscriminatory" or "most favored nation" tariff treatment) to the People's Republic of China, pursuant to participation of both the United States and China in the World Trade Organization (WTO) [see Background, page 2].
- China currently enjoys normal trade status with the United States under provisions of title IV of the 1974 Trade Act (the so-called Jackson-Vanik legislation). This status has been renewed yearly by a presidential waiver since it was first granted by President Carter in 1979. Enactment of H.R. 4444 would permanently remove China from the annual renewal requirement pursuant to Jackson-Vanik [see Background, page 2].
- In addition to granting China PNTR, H.R. 4444 includes provisions that would —
  - Give relief to American domestic industries and workers caused by market disruption caused by Chinese imports (a so-called surge mechanism);
  - Create a Congressional-Executive Commission to monitor human rights in China, including labor standards, religious freedom, and development of rule-of-law and democracy;
  - Enhance mechanisms for enforcing China's WTO commitments; and
  - Address issues relating to the importation of goods made by forced labor imports, Taiwan's entry into the WTO, and U.S. broadcasts to China.
- A Senate bill, S. 2277 [S. Rept. 106-305; Calendar No. 574], approved by the Committee on Finance on May 17, 2000, by a vote of 19 to 1 (Senator Jeffords voting in the negative), is a "clean" PNTR bill without the additional features of H.R. 4444.
- H.R. 4444 passed the full House on May 24, 2000, by a vote of 237 to 197 (Vote no. 228).

## **BACKGROUND**

### ***China's Trade Status Under Current Law***

The trade status of the People's Republic of China is currently controlled by two pieces of legislation dating from the Cold War:

- The **Trade Agreements Extension Act of 1951**, under which Congress directed the President to suspend NTR ("normal trade relations," historically more commonly referred to as "non-discriminatory" or "most favored nation" status, meaning the country in question was permitted to import goods subject to tariffs no higher than those applied to other countries) tariff treatment previously accorded to the Soviet Union and all countries under communist domination or control. Pursuant to that law, President Truman suspended the People's Republic of China's (China) NTR tariff status as of September 1, 1951. The policy established by the 1951 Act remained the basic framework for U.S. trade relations with the Soviet Union, much of Eastern Europe, China, and a number of other communist-dominated countries until 1974.
- The **Trade Act of 1974**, in which Congress largely revised the basis for U.S. trade relations with communist countries, expressly allows for the grant of NTR status under certain conditions. Those conditions were incorporated in title IV of the 1974 Act, together with a procedure for the restoration of NTR status to "nonmarket economy" (NME; i.e., communist) countries which were not accorded NTR treatment as of the date of enactment of the 1974 Trade Act. Under title IV of the 1974 Act, the process for restoring NTR status to an NME country required:
  - (1) Conclusion of a bilateral trade agreement which contains a reciprocal grant of NTR treatment and additional provisions required by law, and which is approved by the enactment of a joint resolution of Congress; and
  - (2) Compliance with the freedom-of-emigration requirements (the so-called "**Jackson-Vanik amendment**," section 402 of the 1974 Trade Act, 19 U.S.C. 2432). These requirements can be fulfilled either by a presidential determination that the country in question allows the free emigration of its citizens, or, under specified conditions, by a presidential waiver of such full compliance.

With respect to China, the provisions for granting NTR to China were first invoked in 1979 when President Carter transmitted to Congress a trade agreement he had reached with China, its proclamation (Pres. Proc. 4697; 44 F.R. 61161), and the Executive Order (E.O. 12167; 44 F.R. 61167) waiving the application of the Jackson-Vanik emigration requirements to China (H. Doc. 96-209). The bilateral agreement with China was approved by Congress on January 24, 1980 (H. Con. Res. 204, 96<sup>th</sup> Congress) and entered into force on February 1, 1980 (together with the reciprocal grant of NTR status, which it contains in addition to all other provisions required by section 405(b) of the Trade Act of 1974; 19 U.S.C. 2435(b)).

In the succeeding years, China's NTR status would remain contingent on: (1) triennial extensions of the underlying trade agreement; and (2) continued compliance with, or waiver of, the freedom of emigration requirement. The bilateral agreement with China, concluded for a three-year initial term, itself provides for automatic three-year extensions. The agreement has thus far been renewed six times, most recently by Presidential Determination No. 98-14 of January 30, 1998 (63 F.R. 5857) through January 31, 2001. The President has renewed the Jackson-Vanik waiver for China each year since 1980, most recently on June 3, 2000. Although the House of Representatives passed disapproval resolutions with respect to China's NTR status in 1990, 1991, and 1992, the Senate did not act on those resolutions. After 1992, neither the House nor Senate passed disapproval resolutions; disapproval resolutions were defeated in the House in 1996, 1997, 1998, and 1999. Thus, the common assertion that Congress renews China's NTR annually is incorrect; rather, since 1980 each president annually has renewed China's Jackson-Vanik waiver, and the Congress has not passed a resolution — which in any case would be subject to veto — disapproving such waiver.

### ***China, the World Trade Organization, and PNTR***

China was one of the original Contracting Parties to the 1948 General Agreement on Tariffs and Trade (GATT), but the nationalist government of the Republic of China (which in 1949 had lost control of the mainland to the communists, retaining control only over Taiwan) withdrew from GATT in 1950. Neither the communist rulers of the People's Republic of China (PRC) nor the nationalist government on Taiwan (hereinafter, Taiwan) were members of the GATT during the intervening years. In 1982, however, the PRC requested and was officially granted observer status to the GATT. The PRC (hereinafter, China) applied for accession shortly thereafter and a formal Working Party on China's accession to the GATT was established in 1986.

China made a push for accession immediately prior to the end of the Uruguay Round of multilateral trade negotiations in 1993, in an effort to become one of the founding members of the World Trade Organization. The negotiations foundered because of a number of issues, including China's request that it be treated as a developing country, its attempt to treat the negotiations as a political rather than a commercial decision, and substantive differences on the level of commitments that China proposed to make with respect to tariffs, services, investment, intellectual property, and other issues.

Although China did not join the WTO as a founding member, negotiations on its entry continued at both the bilateral and multilateral level. On November 15, 1999, the United States and China signed a bilateral market access agreement as an intermediate step toward China's entry into the WTO. In response to the commitments represented by the bilateral agreement with the United States, President Clinton announced that he would work with other WTO member countries to gain China's entry in the WTO as soon as possible, and on March 8, 2000, he transmitted to Congress a request for legislation to terminate the application of title IV of the Trade Act of 1974 to China and to extend Permanent Normal Trade Relations (PNTR) treatment to products from China.

Article I of GATT was incorporated in the WTO as one of its core agreements. Pursuant to that, each member must grant other WTO members unconditional normal trade status. With respect to China's trade status, this means that the United States, as a WTO member, is supposed to avoid offering any advantage or imposing any condition that discriminates among its WTO trading partners. By requiring an annual renewal of China's trade status under current Jackson-Vanik procedures, the United States would, regardless of the reasons for imposing that requirement, effectively be treating China less favorably than all other WTO members who are not subject to a

similar annual vote. That would violate the United States' Article I obligation, and allow China to respond in kind by refusing to extend WTO benefits of the bilateral U.S./China agreement to U.S. firms. By extending China PNTR in title I of H.R. 4444, the United States would be in compliance with this principle.

China is now engaged in completing bilateral agreements with a few other WTO member countries and multilateral negotiations on the protocol of accession and the Working Party report. China will not become a member of the WTO until: it has completed these negotiations; the General Council has approved China's accession by a two-thirds vote; and China has completed its domestic ratification procedures and deposited its instrument of ratification.

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## HIGHLIGHTS

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H.R. 4444 consists of seven titles (divided into two divisions) as follows:

### **Division A: Normal Trade Relations for the People's Republic of China**

**Title I: Normal Trade Relations.** This title authorizes the President to remove China from the annual Jackson-Vanik waiver renewal requirement pursuant to the Trade Act of 1974 and to give its products nondiscriminatory (normal trade relations) treatment on a permanent basis upon China's accession to the WTO. [*NOTE:* These provisions (Sections 101 and 102) of H.R. 4444 are virtually identical to the entire text of the Senate Finance Committee bill, S. 2277.] Title I also creates a surge mechanism to protect American producers and workers adversely impacted by Chinese imports, under the administration of the U.S. International Trade Commission (ITC) and the U.S. Trade Representative (USTR).

### **Division B: United States-China Relations**

**Title II: General Provisions.** This title makes a number of findings with respect to U.S./China trade and China's record on human rights, religious freedom, and worker rights; it also sets forth United States policy toward China in relation to these areas.

**Title III: Congressional-Executive Commission on China.** This title creates a Commission composed of members of the Senate and House and of Executive Branch officials to monitor China's behavior in human rights, labor, religious freedom, and development of the rule of law and democracy. The Commission will report to Congress and to the President.

**Title IV: Monitoring and Enforcement of China's WTO Commitments.** This title provides for the Departments of Commerce, Agriculture, and State and for the USTR to monitor China's compliance with its WTO commitments and to enforce U.S. rights in areas including antidumping and countervailing measures; enforcement of U.S. trade laws; trade law technical assistance to small and medium-size U.S. firms, workers, and unions; and food safety and biotechnology.

**Title V: Trade and Rule of Law Issues in China.** This title provides for stepped-up interagency efforts to enforce the prohibition of goods produced by forced or prison labor from China under the

Tariff Act of 1930; it also affords assistance with respect to commercial and labor market standards and democracy-building in China.

**Title VI: Accession of Taiwan to the WTO.** This title expresses the sense of the Congress that the WTO General Council should approve both China's accession and Taiwan's accession at the same General Council session.

**Title VII: Related Issues.** This title authorizes funds to enhance U.S. broadcasting capabilities to China, through Radio Free Asia and Voice of America.

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## **BILL PROVISIONS**

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### **DIVISION A — NORMAL TRADE RELATIONS FOR THE PEOPLE'S REPUBLIC OF CHINA**

#### **TITLE I — NORMAL TRADE RELATIONS**

##### **Sec. 101. Termination of the Application of Title IV of the Trade Act of 1974**

Section 101 authorizes the President to determine that chapter 1 of title IV of the Trade Act of 1974 (i.e., the Jackson-Vanik amendment) should no longer apply with respect to the People's Republic of China (China), and afterward to proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of China.

##### **Sec. 102. Effective Date**

Section 102 requires the President, prior to making the determination under section 101, to submit a report to Congress certifying that the terms and conditions for China's accession to the WTO are at least equivalent to those agreed between the United States and China on November 15, 1999. Section 102 also provides that the termination of title IV with respect to China will be effective no earlier than the date of China's accession to the WTO.

##### **Sec. 103. Relief from Market Disruption (Surge Mechanism)**

In the Agreement on Market Access Between the People's Republic of China and the United States of America of November 15, 1999 (1999 U.S.-China Agreement), the United States negotiated a special safeguard mechanism to provide relief to domestic industries and workers when Chinese products are being imported in such increased quantities to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. Section 103 of H.R. 4444 implements this mechanism by creating a new chapter 2 in title IV of the Trade Act of 1974. Section 103 is intended to replace the existing section 406 of the Trade Act of 1974 (which will no longer apply to China once the President implements section 101 of this bill) and applies the same standards as section 406 for determining whether there is market disruption. The new chapter 2 does include some procedural modifications to reflect language in the 1999 U.S.-China Agreement.

Under section 103, U.S. industries or workers could initiate an investigation by filing a petition with the U.S. International Trade Commission (ITC) claiming that imports from China are a significant cause of material injury or the threat thereof to the domestic industry. The ITC is also required to initiate an investigation at the request of the President or the U.S. Trade Representative (USTR), or on motion of the House Ways & Means Committee or the Senate Finance Committee, or on the ITC's own motion. Within 60 days after receipt of the petition or request/motion, the ITC is required to make a determination as to whether the subject imports are causing or threatening market disruption. If the ITC determination is affirmative, the 60-day consultation period between the United States and Chinese Governments, provided for in the 1999 U.S.-China Agreement, would begin, five days after the ITC provides its determination to the USTR.

Twenty days after the ITC makes an affirmative determination with respect to market disruption (i.e., 80 days after receipt of the petition or request/motion), the ITC would be required to issue a report to the President and the USTR setting forth the reasons for its determination and recommendations of actions necessary to prevent or remedy the market disruption. Twenty days later, the USTR would be required to publish a notice of proposed action, seeking views and evidence on the appropriateness of the proposed action and whether it would be in the public interest. Section 103 requires that the USTR hold a hearing on the proposed action if requested.

If the United States and China are unable to reach agreement during the 60-day consultation period, then the President would be required to decide what action, if any, to take within 25 days after the end of consultations. Any relief proclaimed would become effective in 15 days. The entire period from petition (or request/motion) to proclamation of relief would be 150 days, which is identical to the duration under section 406 of the Trade Act.

If the ITC makes an affirmative determination on market disruption, there will be a presumption in favor of providing relief. That presumption can be overcome only if the President finds that providing relief would have an adverse impact on the United States economy clearly greater than the benefits of such action, or that such action would cause serious harm to the national security of the United States.

The provision authorizes the President to provide a provisional safeguard in cases where "delay would cause damage which it would be difficult to repair," as permitted under the 1999 U.S.-China Agreement. If such circumstances are alleged, the ITC would be required to make a determination on critical circumstances and a preliminary determination on market disruption within 45 days of receipt of the petition (or request/motion). If those determinations are affirmative, the President would be required to determine whether to provide provisional relief within 20 days.

Finally, section 103 will implement a provision in the U.S.-China Agreement concerning trade diversion to permit the imposition of a remedy in cases where a safeguard applied by a third country with respect to Chinese goods "causes or threatens to cause significant diversions of trade" into the United States. The provision includes procedures for consultation with the Chinese Government as provided for in the 1999 U.S.-China Agreement.

## **DIVISION B — UNITED STATES-CHINA RELATIONS**

### **TITLE II — GENERAL PROVISIONS**

Title II sets forth certain findings and statements of policy regarding United States relations with China.

#### **Sec. 202. Findings**

The findings are set forth in section 202 and describe the growing volume of trade between the two countries, and the mixed record of the PRC with regard to compliance with previous trade agreements. The findings also note the concerns of Congress with regard to China's record on human rights, religious freedom, and worker rights.

#### **Sec. 203. Policy**

Section 203 sets forth American policy toward China in a number of areas, notably that it is the policy of the United States to deepen our trade relations with China and to encourage the PRC to protect worker and human rights.

### **TITLE III — CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S REPUBLIC OF CHINA**

#### **Sec. 301. Establishment of Congressional-Executive Commission on the People's Republic of China**

Section 301 establishes a Congressional-Executive Commission on China.

#### **Sec. 302. Functions of the Commission**

The Commission is modeled on the Commission on Security and Cooperation in Europe, a Congressional-Executive entity established in 1976 to monitor compliance by other countries with the provisions of the Helsinki Final Act. The Commission will focus throughout the year on monitoring human rights in China, including internationally recognized core labor standards and religious freedoms, and the development of rule-of-law and democracy-building in China. The Commission also will maintain lists of victims of human rights abuses in China.

The Commission will submit to Congress and to the President an annual report of its findings including, as appropriate, WTO-consistent recommendations for legislative and/or executive action. The House International Relations Committee will be required to hold a hearing on that report within 30 days of its receipt by the Congress, with a view to reporting to the House any appropriate legislation in furtherance of the Commission's recommendations.

#### **Sec. 303. Membership of the Commission**

Pursuant to section 303, the China Commission will consist of nine Members of each House, plus five Presidential appointees (one each from the Departments of State, Labor, and Commerce and two at-large appointees from among the officers and employees of the executive branch).

## **Secs. 304-309. Other Commission Matters**

These sections provide for authorizing such sums as may be necessary to enable the Commission to carry out its function; Commission staff; and printing and binding costs.

## **TITLE IV – MONITORING AND ENFORCEMENT OF CHINA’S WTO COMMITMENTS**

### **Subtitle A — Review of China’s Membership in the WTO**

#### **Sec. 401. Review within the WTO**

Section 401 provides that in negotiating China’s Protocol of Accession, it will be the objective of the United States to obtain a mechanism for reviewing China’s compliance with WTO obligations on an annual basis.

### **Subtitle B — Authorization to Promote Compliance with Trade Agreements**

#### **Secs. 411 and 412. Findings and Purpose**

These sections detail the importance of monitoring compliance of trading partners with terms of trade agreements.

#### **Sec. 413. Authorization of Appropriations.**

Section 413 authorizes additional resources to be allocated to the Departments of Commerce, Agriculture, and State, and to the Office of the U.S. Trade Representative to strengthen the ability of the United States to monitor and enforce Chinese compliance with trade agreements. The provision will include resources to promote the following activities, among others:

(1) Monitoring China’s compliance with the WTO Agreements; and defending U.S. antidumping, and countervailing duty measures with respect to products from China;

(2) Enforcing U.S. trade laws with respect to products from China;

(3) Creating a Trade Law Technical Assistance Center to assist small and medium-sized businesses, workers, and unions in evaluating potential remedies available under trade laws of the United States with respect to trade involving China;

(4) Creating an Overseas Compliance Program (within the Department of Commerce), that will monitor compliance by China with its international trade obligations;

(5) Committing additional funds to the USTR to investigate, prosecute, and defend cases involving China before the WTO; and

(6) Increasing the Department of Agriculture’s legal and technical expertise in areas covered by trade agreements and U.S. trade law, including food safety and biotechnology, for purposes of monitoring China’s compliance with trade agreement obligations.



**Subtitle C — Report on Compliance by the People's Republic of China with WTO Obligations**

**Sec. 421. Report on Compliance**

Section 421 requires the U.S. Trade Representative to issue an annual report on China's compliance with WTO obligations. The report is intended to be separate from the USTR's annual National Trade Estimate Report on Foreign Trade Barriers, which reviews the trade practices of all countries, including China.

**TITLE V — TRADE AND RULE OF LAW ISSUES IN THE PEOPLE'S REPUBLIC OF CHINA**

**Subtitle A — Task Force on Prohibition of Importation of Products of Forced or Prison Labor**

**Secs. 501-505. Establishment, Composition, Functions, Authorization, & Reports of Task Force**

The import of goods made by forced or prison labor into the United States is prohibited by U.S. law (section 307 of the Tariff Act of 1930), consistent with Article XX of the 1994 GATT agreement. Article XX specifically allows countries to take action without retaliation to prohibit imports of goods made by prison labor. Sections 501-505 establish an interagency task force, chaired by the Secretary of the Treasury or his designee, to monitor and promote effective enforcement of this prohibition, including compliance by Chinese and other foreign exporters, with respect to products of Chinese origin. The task force will include the Secretaries of Treasury, Commerce, Labor, and State, the Commissioner of Customs, and the heads of other executive branch agencies, as appropriate, acting through their designees at the Deputy Assistant Secretary level (Assistant Commissioner level in the case of Customs) or higher. The task force is to submit annual reports to Congress.

**Subtitle B — Assistance to Develop Commercial and Labor Rule of Law**

**Sec. 511-514. Establishment of Technical Legal Assistance and Authorities; Human Rights**

Sections 511-514 call for the allocation of resources to the Departments of Commerce, State, and Labor to provide training and technical assistance in China for purposes of developing the rule of law with respect to commercial and labor market standards and with respect to democracy-building. The Departments will establish programs to assist China in bringing its laws into compliance with international requirements, including WTO rules and ILO (International Labor Organization) conventions, and in developing processes to enforce the rule of law. Section 513 prohibits funds to Chinese governmental entities responsible for human rights violations.

## **TITLE VI – ACCESSION OF TAIWAN TO THE WTO**

Section 601 will express the sense of the Congress that the WTO General Council should approve both China's accession and Taiwan's accession at the same General Council session.

## **TITLE VII – RELATED ISSUES**

### **Sec. 701. Authorizations of Appropriations for Broadcasting Capital Improvements and International Broadcasting Operations**

Section 701 authorizes funds to be appropriated for "Department of State and Related Agency, Related Agency, Broadcasting Board of Governors, Broadcasting Capital Improvements" in the amount of \$65 million for FY 2001. This section also authorizes funds to be appropriated for International Broadcasting Operations in the amount of \$34 million for each of the fiscal years 2001 and 2002 for broadcasts in China.

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## **ADMINISTRATION POSITION**

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The Clinton Administration is on record as strongly favoring this legislation. The Administration's position can be found at the White House's web site devoted to this issue: [www.chinapntr.gov](http://www.chinapntr.gov).

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## **COST**

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The Congressional Budget Office concludes that enactment of H.R. 4444 "would likely increase revenues, but CBO has no basis for estimating the revenue impact of granting the President such authority." CBO estimates that implementing H.R. 4444 would cost \$1 million a year, subject to the availability of appropriate funds, to fund increased investigating and reporting requirements of the International Trade Commission. Since enacting H.R. 4444 would affect revenues, pay-as-you-go procedures would apply [H. Rept. 106-632, page 22].

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## POSSIBLE AMENDMENTS

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- Smith (NH). Regarding Chinese cooperation on American POWs.
- Smith (NH). Regarding Chinese companies controlled by the People's Liberation Army.
- Smith (NH). Regarding coercive abortions in China.
- Smith (NH). Regarding harvesting human organs.
- Smith (NH). Regarding slave labor in China.
- Helms. Regarding U.S./China trade equity.
- Helms. Numerous amendments.
- Kyl. Regarding Taiwan's admission to the WTO.
- Thompson. Regarding missile proliferation. Similar to S. 2645, the China Nonproliferation Act [Senate Calendar No. 583], to provide for the application of certain measures to the People's Republic of China in response to the illegal sale, transfer, or misuse of certain controlled goods, services, or technology, and for other purposes.

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